

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

**PAYTON-WRIGHT FORD, INC.<sup>1</sup>**

**Fort Worth, Texas**

**Employer**

**and**

**Case 16-RC-10539**

**INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE  
WORKERS, AFL-CIO**

**Petitioner**

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

The Employer, Payton-Wright Ford, Inc., operates an automobile dealership in Grapevine, Texas where it employs approximately 180 employees. The Petitioner, International Association of Machinists and Aerospace Workers, AFL-CIO, filed a petition with the National Labor Relations Board under section 9(c) of the National Labor Relations Act seeking to represent a unit of all the Employer's full-time and regular part-time automotive service technicians, excluding the part-time service technician. The unit sought by the Petitioner comprises approximately 36 employees. The parties stipulated to the inclusion of all service technicians, including the quick lube technicians. However, the Employer argues the unit should also include all full and regular part-time service advisors, all full time and regular part-time body or collision center technicians, all full and regular part-time parts employees, including the parts back counter employees, stocker, warranty parts employee, driver, and warranty clerk, and a part-time service technician, but exclude the bookers, aftermarket sales, and three parts front counter employees. The unit sought by the Employer numbers about 60 employees. The parties have no prior bargaining history. A hearing officer of the Board held a hearing and the parties filed briefs with me.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the service technicians are a distinct and homogeneous group of highly trained and skilled craftsmen constituting an appropriate, separate craft bargaining unit, that they share a community of interest separate from that of other employees, and that the quick lube technicians, which the parties have stipulated

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<sup>1</sup> The Employer's name appears as amended at hearing.

be included in the unit, should be included in this unit as apprentices or helpers. I further find that the part-time service technician should also be included in the unit. Accordingly, I have directed an election in a unit that consists of approximately 37 service technicians.

## **I. OVERVIEW OF EMPLOYER'S OPERATIONS**

The Employer operates an automobile dealership and is engaged in the sale, service and repair of new and used cars and trucks and the sale of parts. Employer employs approximately 180 employees. The general manager, Dan Weiss, is responsible for the overall operation of Employer's business. The business is divided into six departments: service, parts, body shop, finance, sales, and controller.

The three departments at issue in the instant petition are service, parts, and the body shop. The service center and parts department is located at 701 East Highway 114 in Grapevine, Texas. Working in the service center are the automotive service technicians, the service advisors, and parts and warranty employees. The Employer's body shop is located about two-tenths of a mile from its service center and parts department at 1321 Minters Chapel Road in Grapevine, Texas. Working at the body shop are the body shop advisors/estimators and body shop technicians.

Each department is managed by a separate director who reports to General Manager Weiss. Most employee discipline is handled by each department supervisor. Weiss is only consulted for performance-based employee problems. David Blakeney is service director and oversees the management of the entire service department. Reporting to him are Randy Rogers, who supervises the service advisors, and Bill Blaine and John Wilhouse, production managers, who supervise the service technicians. Greg Wunneburger is collision center manager and supervises two service advisors/estimators, and seven body shop technicians. Jerry Livingstone is parts manager, and supervises seven parts counter employees, one stocker, one warranty parts employee, one driver, and two aftermarket sales people. Assisting him is Betty Stone, assistant parts manager.

The Employer's service department is open Monday through Friday 7 a.m. to 7 p.m. and Saturdays, 8 a.m. to 5 p.m. The body shop is open 7 a.m. to 6 p.m. Service technicians and body shop technicians wear the same uniform. All the Employer's employees receive the same benefits, use the same employee handbook, and use the same computer system to clock in. The service center employees use the same break area. The body shop technicians and advisors use a separate break area located at the Minters Chapel Road facility.

## **II. SERVICE DEPARTMENT**

The Employer's automobile dealership includes a service area where the service advisors attend to customers; a body shop, where the service technicians perform repairs; and a parts department. When a customer arrives with a repair, he is greeted by the service advisor who notes the vehicle's problem. The service advisor then enters a repair

order in the computer and assigns the repair to a skill group among the eight groups of service technicians. At this point, the repair order may go directly to the service technicians, who pull up the repair order on the computer and begin the repair. If the repair is covered by warranty, the repair order will first go from the service advisor to the bookers/flaggers, who note any warranty issues, and then send the order to the service technicians for repair. Additionally, the bookers/flaggers record the service technicians' labor time upon their completion of the repair. No paper transaction occurs between the departments until the service advisor meets the customer with the repair order. If the vehicle was repaired in both the service center and the body shop, which occurs in about one out of three service center repair jobs, the same repair order is used between the two departments. The service advisor then directs the customer to the cashier.

A similar process occurs at the body shop; a body shop advisor/estimator greets the customer, notes the problem, and assigns it to the proper body shop technicians. However, the body shop advisors must address insurance issues, a component missing from the service center work. It is not uncommon for a damaged vehicle to be repaired in the body shop and then sent to the service technicians for additional repair that the body shop is unable to perform. For example, body shop technicians cannot replace damaged air bags because they lack the training. Such a repair would be sent to the service center. Additionally, alignments cannot be performed at the body shop because the body shop lacks an alignment machine.

### **III. SERVICE TECHNICIANS**

The mechanical work performed by the service technicians is divided into the nine following groups: group 1 heavy line; group 2 drivability; group 3 front end, brakes; group 4 electric, trim a/c, lt. line; group 5 auto trans, group 6 make ready; group 7 ucd<sup>2</sup>; group 8 quick lube; and group 9 quality control.

Service technicians work from 7 a.m. to 6 p.m. Monday through Friday, and Saturday, 8 a.m. to 5 p.m. The record does not show whether service technicians rotate Saturday work.

Service technicians receive their assignments from the computer. The record does not reflect how this is precisely done. However, the service technicians look on the computer to see what repair jobs need to be done and in what order they need to be done.

Service technicians spend about 20 to 30 percent of their time diagnosing repairs. The remainder of their time is devoted to repair or replacement. The record does not show the percentage of time service technicians perform repairs versus replacements. However, presently, more part replacement occurs than part repair.

In terms of skill, the Employer does not require its service technicians to be certified from the National Institute of Automotive Service Excellence, although at least six service technicians have this training and are certified as master mechanics. The

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<sup>2</sup> The record does not reveal what ucd means.

Employer does require each service technician be Ford-certified in his area of expertise. The Employer pays the service technicians for their time attending the Ford certification training. Additionally, the Employer has an apprentice training program, called ASSETS, for group 8 quick lube technicians to gain more experience. At least one quick lube employee has been promoted to a service technician job.

Service technician employees are paid on a flat-rate system. The Chilton Manual is used to compute service technicians' wages. Regardless of how long it actually takes the service technician to complete the repair, he will be paid according to the time specified by the Chilton Manual. Generally, a service technician earns between \$20,000 to \$100,000 a year.

Service technicians purchase their own tools, which cost between \$30,000 to \$40,000. The quick lube technicians also have their own tools, although they cost significantly less. Quick lube technicians are paid at a lower rate than the service technicians, but the record does not disclose how much lower.

The service technicians are supervised by Bill Blaine and John Wilhouse.

At least two service technicians have previously worked for the Employer as service advisors.

#### **IV. SERVICE ADVISORS**

Service advisors work primarily with the public. They have their own offices, located in an area referred to as "the service drive." Some of their offices bear nameplates. The service advisors' offices are located 20 to 50 feet away from the service technicians' shop. Service advisors work Monday through Friday from 7 a.m. to 6 p.m., but two stay from 6 p.m. to 7 p.m. and rotate that duty. Additionally, service advisors work every third Saturday from 8 a.m. to 5 p.m. Service advisors wear a golf shirt. The advisors talk to the customers, assess the vehicles' problems, and assign them to the particular service technician group that is capable of doing the repair.

Service advisors are not required to have Ford certification or any other type of certification. Service advisors are also paid on a flat-rate system. They may earn between \$30,000 to \$80,000. Service advisors also engage in "upselling," a term whereby if the service advisor notices an additional maintenance problem, which may be brought to his attention by the service technician, he tries to sell the customer the additional repair. In this way, he can earn more money, just as the service technician, who performs the repair, will earn more money. It is not clear from the record if the service advisor and service technician both receive a bonus for upselling. The Employer refers to employee bonuses as "spiffs," which it uses to promote certain services or products. For example, the record shows service technicians receive a "spiff" for selling Granitize products. The record shows a service advisor and service technician may receive a "spiff" if they sell a transmission service.

Unlike service technicians, service advisors are not required to supply their own tools, although many have a screwdriver or wrench on hand.

Service advisors are supervised by Randy Rogers.

Two of the nine service advisors previously worked for the Employer as service technicians.

## **V. PART-TIME SERVICE TECHNICIAN**

The Employer has a part-time service technician who works about 30 hours a week, generally between 6 a.m. and 10 a.m. The part-time service technician previously worked many years for the Employer as an automotive technician. He has been His work area is located in the service shop, between drivability and transmission. He wears the same uniform as the service technicians. The part-time service technician works in group 9, under quality control. About 50 percent of his time is spent repairing the Employer's golf carts that personnel use to drive around the dealership, 30 to 40 percent is spent on repairing and maintaining the service technicians' equipment such as the AC machine or hose reels, and about 10 percent is spent performing mechanical repair work on actual customer vehicles. The part-time service technician is paid on a flat rate that is computed in actual time worked, that is, there is no manual used to calculate how much time he should take to complete a repair job, unlike the service technicians and body shop technicians. The part-time service technician reports to Bill Blaine or John Wilhouse, the same supervisors who supervise the service technicians, and works in the Service Department. The part-time service technician shares the same benefits the other employees receive.

## **VI. BODY SHOP**

The Employer employs seven body shop technicians. Body shop employees are supervised by Greg Wunneburger. The record does not reveal if Wunneburger's office is at the body shop location or at the service center location. The body shop has its own receptionist, separate from the service center. The record reveals little contact between the body shop technicians and service center employees.

Body shop technicians work in the body shop area, located in a building about two-tenths of a mile away from the service shop. Three body shop technicians perform metal and body work. The remaining four body shop technicians apply paint to the once-damaged vehicles. Body shop technicians wear the same uniform worn by the service technicians. Body shop technicians work from 7 a.m. to 6 p.m. Unlike the service department, the body shop closes at 6 p.m. Body shop employees do not work Saturdays. Body shop technicians also earn a flat rate, but the Chilton Manual is not used to compute the time necessary to complete a body job, rather, a collision manual is consulted. The body shop technicians access the same computer program the service technicians and advisors use.

The record does not reveal if the Employer requires body shop technicians to be Ford certified. However, the Employer would not send a body shop technician for Ford certification in transmissions, whereas a service technician who works with transmissions would be required to receive Ford certification in transmission repair. No cross-training occurs between the body shop technicians and service technicians. Regarding tools, the body shop technicians also provide their own tools, but they cost at least \$10,000 less than the service technicians' tools. Additionally, the body shop technicians use different equipment than the service technicians. For example, the body shop uses paint equipment and has a frame-pulling tool on hand, whereas the service technicians use a tire machine and alignment machine. The record does not show any exchange or promotions between the body shop technicians and service technicians.

Body shop technicians spend approximately 60 percent of their time performing repairs versus replacement. The record does not show body shop technicians engaging in diagnosis of repair problems.

## **VII. PARTS DEPARTMENT**

The parts department is located on the south side of the service area, behind the service advisors work location. Jerry Livingstone supervises the parts department. Parts employees are divided into front counter employees, who deal with the public; and back counter employees, who deal with the mechanics. The parties stipulated to exclude the front counter employees. The parts employees are not paid on a flat rate, like the service technicians and body shop technicians, but the record does not reveal what their wage rates are. The following parts employees' wages range between \$40,000 to \$60,000 per year.

### ***Parts Back Counter Employees***

Parts back counter employees bring parts to the body shop technicians. They also furnish parts to the service technicians. The record does not show if the parts employees wear a uniform. The record does not show what hours the parts employees work.

### ***Stocker***

The stocker enters stock orders in the computer and places the ordered parts upon a shelf for the parts counter employees to provide to the service technicians.

### ***Warranty Parts Employee***

The warranty parts employee tracks warranted parts. For example, when a service or body shop technician performs a warranty repair, they must turn the old part into the warranty parts employee. The warranty parts employee catalogues and keeps the warranty parts in case the manufacturer performs an audit.

### ***Driver***

The driver picks up and delivers parts that the dealership does not have on hand. He also drives vehicles under repair from the body shop to the service center if both areas

are needed to complete the repair. The record does not reflect whether the driver wears a uniform.

### ***Warranty Clerk***

The warranty clerk ensures that the correct warranty rates and hours are paid to the service and body shop technicians. Additionally, the warranty clerk submits the warranty to the appropriate payor, and ensures the claims are paid fully and in a timely manner. The warranty clerk has her own cubicle, located in the service department, behind the service advisor area and shop area, and is supervised by Service Director Blakeney. The record shows the warranty clerk earns \$30,000 to \$40,000 per year. The record does not show whether the warranty clerk wears a uniform.

## **VIII. COMMUNITY OF INTEREST ANALYSIS**

Nothing in the Act requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the unit be “appropriate.” ***Bartlett Collins Co.***, 334 NLRB 484 (2001). Thus, a union is not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” ***P. Ballantine & Sons***, 141 NLRB 1103 (1963); ***Bamberger’s Paramus***, 151 NLRB 748, 751 (1965); ***Purity Food Stores***, 160 NLRB 651 (1966). Accordingly, a craft department is generally an appropriate unit where, as here, there is no history of collective bargaining on a more comprehensive basis. See ***E.I. Du Pont & Co.***, 162 NLRB 413 (1966). A variety of factors are involved in determining whether employees share a community of interest. The factors include, but are not limited to, the nature of employee skills and functions, common supervision, work situs, interchangeability and contact among employees, wages and benefits, and work conditions. See e.g. ***Harron Communications, Inc.***, 308 NLRB 62 (1992); ***Boudreaux’s Drywall, Inc.***, 308 NLRB 777 (1992).

I conclude that the service technicians are a craft unit. They are primarily engaged in mechanical diagnosis and repair work that is not performed by other employees. In order to perform this work, the service technicians undergo specialized training and use specialized tools. Indeed, on similar facts, the Board has held that automobile mechanics are a craft unit. See ***Dodge City of Wauwatosa, Inc.***, 282 NLRB 459 (1986); ***Fletcher Jones Chevrolet***, 300 NLRB 875 (1990). In ***Dodge City*** and ***Fletcher Jones***, the Board stated that “mechanics possessing skills and training unique among other employees constitute a group of craft employees within an automotive...department, and therefore may, if requested, be represented in a separate unit, excluding other service department employees.” ***Dodge City of Wauwatosa, Inc.***, 282 NLRB at 460 fn. 6, citing ***Fletcher Jones Chevrolet***.

In its brief, the Employer argues that a craft unit cannot exist because a group of lesser skilled employees, the four quick lube technicians, has been petitioned for inclusion in the unit. The Employer’s argument is not supported by law or the record. Lower skilled lube technicians have been included in craft units as helpers or trainees. ***Fletcher Jones Chevrolet***, 300 NLRB 875 (1990) and ***Dodge City of Wauwatosa, Inc.***

282 NLRB 459 (1986). In *Fletcher Jones*, the quick services technicians were not as skilled as the other service technicians, but performed similar mechanical work and received training and classes from the Employer in order to upgrade their skills. The Board relied upon these factors in deciding to include them in the unit. Similarly, in *Dodge City*, the Board included the lube and oil work employees in the craft unit. *Id.*, 282 NLRB 459 (1986).

Including the four quick lube technicians in the craft unit is supported by *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990) and *Dodge City of Wauwatosa, Inc.* 282 NLRB 459 (1986). On the instant facts, as in *Fletcher Jones Chevrolet*, the four quick lube technicians perform mechanical work, primarily oil changes and light automotive maintenance. They work in the same area as the service technicians, and wear the same uniform. More importantly, the Employer provides the quick lube technicians an apprenticeship training class so they may advance to the level of service technician, and the record shows at least one quick lube technician has been so promoted.

The Employer attempts to distinguish *Dodge City* from the instant facts by arguing that it requires less automotive training than was required in *Dodge City* and *Fletcher Jones Chevrolet*. The record does not support the Employer's contention. The Employer only requires Ford certification among its service technicians; they are the only employees who are required to attend Ford classes. The Employer pays for this training. And, as a result of the service technicians' training and expertise, only they may perform certain automotive repairs. Moreover, the record shows at least six of the Employer's approximately 36 service technicians are certified as master technicians. To be certified as a master technician, one must be certified in every automotive repair area with the National Institute of Automotive Service Excellence.

The record discloses additional facts that support a craft unit. As in *Dodge City* and *Fletcher Jones Chevrolet*, the service technicians supply their own tools. Further, their tools are considerably more expensive than the body shop technicians' tools. Service technicians perform job duties that are distinct from the other employees. Only the service technicians perform alignment work, which requires a special machine, whereas only the body shop technicians can pull a frame off a vehicle. Only the service technicians can replace an air bag, which requires special training. Although the record shows some overlap in the mechanical skills between the service technicians and body shop technicians, on balance, more skilled mechanical work is performed by the service technicians than the body shop technicians. Moreover, only the service technicians are required to be Ford-certified in their area of expertise. The record also shows that at least six service technicians are certified as master mechanics, and several have worked for the Employer for a minimum of ten years. Further, no cross-training occurs between the service technicians and body shop technicians, and there is little contact between the two groups, except for the annual Christmas party, to which all employees are invited. The service technicians work different hours than the body shop technicians and report to different supervisors. Although both service technicians and body shop technicians are paid on the flat rate system, each group's flat rate is computed differently. All of these

factors support a finding that the service technicians comprise a craft unit which is appropriate for collective bargaining.

Although it would not be inappropriate to include the body shop technicians in the unit, nothing requires me to include them in the petitioned-for unit. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-423 (4<sup>th</sup> Cir. 1963), cert. denied 375 U.S. 966 (1964), *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10<sup>th</sup> Cir. 1962) (It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining.) See also *NLRB v. Zayre Corp.*, 424 F.2d 1159, 1164 (5<sup>th</sup> Cir. 1970), citing the Fourth Circuit, (“In many cases there is no ‘right’ unit, and the Board is faced with alternative appropriate units.”) *NLRB v. Quaker City Life Ins. Co.*, (4<sup>th</sup> Cir. 1963).)

The Employer contends that the unit must also include the service advisors, the parts back counter employees, stocker, driver, warranty parts employee, and warranty clerk because these employees have frequent contact with the service technicians and share the same benefits, citing *Vecellio & Grogan, Inc.*, 231 NLRB 136 (1977). The instant facts are distinguishable from *Vecellio & Grogan, Inc.* because that case involved maintenance and parts employees from an aviation division of a highway construction company. Moreover, there were no craft unit issues in *Vecellio & Grogan, Inc.*

On the instant facts, the record discloses that service technicians’ have a separate craft identity and distinct community of interest from the other employees. Regarding job function, service advisors work with the public and assign repair jobs via computer to the corresponding service technician group. Parts employees order, store, and track automotive parts and the corresponding warranties. In contrast, the service technicians strictly work on automotive repair, for which they need special training. The Employer requires no training or certification for parts employees, service advisors or any other group of employees. Regarding work area, service advisors work on the service drive and have their own offices, some of which bear their own nameplates. Likewise, the parts employees work behind a counter in an area closer to the service advisors than the service technicians. In contrast, the service technicians work only in the shop area. With respect to uniforms, service advisors wear a different uniform from the service technicians, and, contrary to the Employer’s contention, the record does not reveal whether the parts employees wear the same uniform as the service technicians. Regarding wages and supervision, service advisors and parts employees are paid differently from the service technicians and have different immediate supervisors. Although the record shows some contact between service advisors, parts employees and service technicians, this contact is general—for example, a part that needs to be taken to the shop floor or a customer with a question over a repair—and not related to each group’s distinct function in the overall servicing of a customer’s vehicle. On balance, there are no facts which would mandate the unit include service advisors and parts employees.

The Employer relies upon *R.H. Peters Chevrolet, Inc.*, 303 NLRB 791 (1991), to argue that the service advisors share a strong community of interest with the service

technicians and should be included in the unit. *R.H. Peters Chevrolet, Inc.*, is distinguishable from the instant facts because there, the service advisors were required to take the same yearly examination as the mechanics. Here, the Employer requires no yearly examination of the service advisors. Moreover, in *R.H. Peters Chevrolet, Inc.*, the Board included service advisors in the unit because it found it was not possible to ascertain the parties' clear intent with regard to whether the service advisor position should be included or excluded from the unit. In contrast, here the parties have clearly stated their positions.

The final issue I must address is whether the part-time service technician be included in the unit. The Petitioner argues he must be excluded. The Employer argues for the part-time service technician's inclusion in the unit. Based on the foregoing, I include the part-time service technician in the unit.

Part-time employees are included in a unit with full-time employees whenever the part-time employees perform work within the unit on a regular basis for a sufficient period of time during each week or other appropriate calendar period to demonstrate that they have a substantial and continuing interest in the wages, hours, and working conditions of the full-time employees in the unit. *Fleming Foods*, 313 NLRB 948 (1994); *Pat's Blue Ribbons*, 286 NLRB 918 (1987); *Farmers Insurance Group*, 143 NLRB 240, 245 (1979). Such part-time employees are described as "regular part-time employees."

The similarity of interests between full-time and part-time employees is a determinative factor. *Newburgh Mfg. Co.*, 151 NLRB 763 (1965); *Berea Publishing Co.*, 140 NLRB 516 (1963); *Great Atlantic & Pacific Tea Co.*, 119 NLRB 603 (1957). In evaluating the part-time status of employees, consideration is given to regularity and continuity of employment, the similarity of duties and functions to those of full-time employees, the similarity of wages, benefits, and other working conditions, and the supervision of the part-time employees. *V.I.P. Movers*, 232 NLRB 14 (1977); *L & A Investment Corp.*, 221 NLRB 1206, 1207 (1975); *Lancaster Welded Products*, 130 NLRB 1478 (1961); *Mensh Corp.*, 159 NLRB 156, 158 (1966). The work history of the employees in question is also considered, *Columbus Plaza Hotel*, 148 NLRB 1053 (1964), as is the turnover rate among that classification of employees *Lewis & Coker Supermarkets*, 145 NLRB 970 (1964); *Vindicator Printing Co.*, 146 NLRB 871 (1964).

Although the record discloses that the part-time service technician primarily repairs the Employer's golf carts and the service technicians' automotive equipment, the type of work he performs closely resembles that of the service technicians. Moreover, he works in the same area as the service technicians, uses many of the same tools, and is known as a service technician among the employees. Further, the record shows the service technicians consult the part-time service technician on manual transmission jobs because of his experience and expertise. Also, when the Employer is short on mechanical labor, the part-time service technician also performs rear differential work. Additionally, the part-time service technician has worked as an automotive mechanic for many years, and has extensive automotive mechanic certification and training.

Accordingly, for the reasons stated above, I find the appropriate unit to be the service technicians, including the quick lube technicians in group 8 and the part-time service technician, and excluding all other categories of employees, is an appropriate unit.

## **IX. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer, a Texas corporation, is engaged in the sale, service and repair of new and used cars and trucks and the sale of parts with a place of business in Grapevine, Texas. During the past twelve months the Employer received gross revenues in excess of \$500,000 and during that same period has sold goods valued in excess of \$50,000 to customers located within the State of Texas. Each of said customers during the same period purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The parties stipulated to the petitioner's status as a labor organization.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and regular part-time automotive service technicians, including the quick lube technicians and part-time service technician, employed at the Employer's Grapevine, Texas service shop.

**EXCLUDED:** All other employees including, professional employees, managerial employees, guards, and supervisors as defined in the Act.

## **X. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the United Farmworkers of America, AFL-CIO.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 819 Taylor Street Federal Office Building, Rm. 8A24 Fort Worth, Texas 76102, on or before December 1, 2003. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 713-209-4890. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Resident Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on December 8, 2003. The request may **not** be filed by facsimile.

Dated: November 24, 2003

/s/ Curtis A. Wells  
Curtis A. Wells, Regional Director,  
National Labor Relations Board  
Region 16  
819 Taylor Street - Room 8A24  
Fort Worth, TX 76102

### **Classification Index**

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